

HOUSE BILL No. 1541

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-4.1-8-5; IC 29-1; IC 29-3; IC 30-5; IC 32-21-2-3; IC 34-9-3-4.

Synopsis: Various probate issues. Specifies that damages paid to a plaintiff's estate in a personal injury case maintained by the personal representative of a plaintiff who dies from causes other than the personal injury are subject to the statutes governing the inheritance tax, the Indiana estate tax, and the generation skipping transfer tax. Requires a person paying the damages to notify the department of state revenue of the payment within ten days. Requires the department to notify the county assessor of the county in which the plaintiff was domiciled at the time of the plaintiff's death. Specifies the methods of satisfying the survivors' allowance. Provides separate procedures for the petitioned removal of a corporate personal representative following a change in the control of the corporate personal representative. Changes the mailing requirements for opening an estate or guardianship from certified mail to first class postage prepaid mail. Provides the method for determining the amount a joint owner or beneficiary of a protected person's multiple party account is entitled to receive from the protected person's estate when a guardian has used assets of the multiple party account. Makes numerous changes and additions to the power of attorney statutes to conform with the Uniform Power of Attorney Act. Specifies mailing address requirements for recording conveyances.

Effective: July 1, 2009.

Foley, Van Haaften

January 16, 2009, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1541

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-4.1-8-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Within ten (10)
3 days after life insurance proceeds are paid to a resident decedent's
4 estate, the life insurance company shall give notice of the payment to
5 the department of state revenue.

6 **(b) Not later than ten (10) days after damages payable under a**
7 **cause of action maintained by a personal representative under**
8 **IC 34-9-3-4 are paid to a resident decedent's estate, the person**
9 **making the payment shall give notice of the payment to the**
10 **department of state revenue.**

11 ~~(b)~~ (c) The department of state revenue shall send a copy of any
12 notice which it receives under subsection (a) **or (b)** to the county
13 assessor of the county in which the resident decedent was domiciled at
14 the time of ~~his~~ **the resident decedent's** death.

15 SECTION 2. IC 29-1-4-1 IS AMENDED TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2009]: Sec. 1. **(a)** The surviving spouse of a
17 decedent who was domiciled in Indiana at ~~his~~ **the decedent's** death is



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entitled from the estate to an allowance of twenty-five thousand dollars (\$25,000). ~~The allowance may be claimed against the personal property of the estate or a residence that is a part of the decedent's estate, or a combination of both.~~ If there is no surviving spouse, the decedent's children who are under eighteen (18) years of age at the time of the decedent's death are entitled to the same allowance to be divided equally among them.

(b) The allowance under subsection (a) may be claimed against:

- (1) the personal property of the decedent's estate;**
- (2) the real property that is part of the decedent's estate; or**
- (3) a combination of personal property under subdivision (1) and real property under subdivision (2).**

(c) Not later than ninety (90) days after the order commencing the estate administration, an individual entitled to the allowance may file with the court an election specifying whether the allowance is being claimed under subsection (b) against the personal property of the estate or the real property that is part of the estate, or a combination of both. An interested party may file an objection to the manner in which the allowance is being claimed not later than thirty (30) days after the date the election is filed with the court. The court shall rule on the objection after notice and a hearing. If an election is not filed within ninety (90) days after the order commencing the estate administration, the allowance must be satisfied according to the following order of preference:

- (1) From the intangible personal property of the estate.**
- (2) From the tangible personal property of the estate.**
- (3) From the real property that is part of the estate.**

(d) If the personal property and a residence that is a part of the decedent's estate are less than twenty-five thousand dollars (\$25,000) in value, the spouse or decedent's children who are under eighteen (18) years of age at the time of the decedent's death, as the case may be, are entitled to any real estate of the estate to the extent necessary to make up the difference between the value of the personal property ~~plus the residence that is a part of the decedent's estate~~ and twenty-five thousand dollars (\$25,000). The amount of that difference is a lien on the ~~remaining~~ real estate. **However, no real estate may be sold to satisfy the survivor's allowance unless the sale is approved:**

- (1) in an agreement signed by all interested persons; or**
- (2) by court order following notice to all interested persons.**

(e) An allowance under this section is not chargeable against the distributive shares of either the surviving spouse or the children.

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1 **(f) For purposes of this section, the value of the real property**
 2 **that is part of a decedent's estate must be determined as of the date**
 3 **of the decedent's death.**

4 SECTION 3. IC 29-1-7-7, AS AMENDED BY P.L.95-2007,
 5 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2009]: Sec. 7. (a) As soon as letters testamentary or of
 7 administration, general or special, supervised or unsupervised, have
 8 been issued, the clerk of the court shall publish notice of the estate
 9 administration.

10 (b) The notice required under subsection (a) shall be published in
 11 a newspaper of general circulation, printed in the English language and
 12 published in the county where the court is located, once each week for
 13 two (2) consecutive weeks. A copy of the notice, with proof of
 14 publication, shall be filed with the clerk of the court as a part of the
 15 administration of the estate within thirty (30) days after the publication.
 16 If no newspaper is published in the county, the notice shall be
 17 published in a newspaper published in an adjacent county.

18 (c) The notice required under subsection (a) shall be served by
 19 **certified first class postage prepaid** mail on each heir, devisee,
 20 legatee, and known creditor whose name and address is set forth in the
 21 petition for probate or letters, **except as otherwise ordered by the**
 22 **court.** The personal representative shall furnish sufficient copies of the
 23 notice, prepared for mailing, and the clerk of the court shall mail the
 24 notice upon the issuance of letters.

25 (d) The personal representative or the personal representative's
 26 agent shall serve notice on each creditor of the decedent:

- 27 (1) whose name is not set forth in the petition for probate or
- 28 letters under subsection (c);
- 29 (2) who is known or reasonably ascertainable within one (1)
- 30 month after the first publication of notice under subsection (a);
- 31 and
- 32 (3) whose claim has not been paid or settled by the personal
- 33 representative.

34 The notice may be served by mail or any other means reasonably
 35 calculated to ensure actual receipt of the notice by a creditor.

36 (e) Notice under subsection (d) shall be served within one (1) month
 37 after the first publication of notice under subsection (a) or as soon as
 38 possible after the elapse of one (1) month. If the personal representative
 39 or the personal representative's agent fails to give notice to a known or
 40 reasonably ascertainable creditor of the decedent under subsection (d)
 41 within one (1) month after the first publication of notice under
 42 subsection (a), the period during which the creditor may submit a claim

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1 against the estate includes an additional period ending two (2) months
 2 after the date notice is given to the creditor under subsection (d).
 3 However, a claim filed under IC 29-1-14-1(a) more than nine (9)
 4 months after the death of the decedent is barred.

5 (f) A schedule of creditors that received notice under subsection (d)
 6 shall be delivered to the clerk of the court as soon as possible after
 7 notice is given.

8 (g) The giving of notice to a creditor or the listing of a creditor on
 9 the schedule delivered to the clerk of the court does not constitute an
 10 admission by the personal representative that the creditor has an
 11 allowable claim against the estate.

12 (h) If any person entitled to receive notice under this section is
 13 under a legal disability, the notice may be served upon or waived by the
 14 person's natural or legal guardian or by the person who has care and
 15 custody of the person.

16 (i) The notice shall read substantially as follows:

17 NOTICE OF ADMINISTRATION

18 In the _____ Court of _____ County, Indiana.

19 Notice is hereby given that _____ was, on the ____ day of
 20 _____, 20 __, appointed personal representative of the estate of
 21 _____, deceased, who died on the ____ day of _____, 20 __.

22 All persons who have claims against this estate, whether or not now
 23 due, must file the claim in the office of the clerk of this court within
 24 three (3) months from the date of the first publication of this notice, or
 25 within nine (9) months after the decedent's death, whichever is earlier,
 26 or the claims will be forever barred.

27 Dated at _____, Indiana, this ____ day of _____, 20 __.

28 _____
 29 CLERK OF THE _____ COURT
 30 FOR _____ COUNTY, INDIANA

31 SECTION 4. IC 29-1-7.5-1.5, AS AMENDED BY P.L.238-2005,
 32 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2009]: Sec. 1.5. (a) As soon as letters testamentary or letters
 34 of administration have been issued, the clerk of the court shall serve by
 35 mail notice of the petition on each of the decedent's heirs at law, if the
 36 decedent died intestate, or the devisees and legatees under the
 37 decedent's will. The mailing of notice under this subsection may not be
 38 waived.

39 (b) The notice required under subsection (a) shall read substantially
 40 as follows:

41 NOTICE OF UNSUPERVISED ADMINISTRATION TO BE
 42 MAILED TO A DISTRIBUTE

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In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____, on the _____ day of _____, 20__, was appointed as the personal representative of the estate of _____, who died on the _____ day of _____, 20__, {leaving a will} {not leaving a will}. The estate will be administered without court supervision.

As an heir, a devisee, or a legatee of the estate (a "distributee"), you are advised of the following information:

(1) The personal representative has the authority to take actions concerning the estate without first consulting you.

(2) The personal representative may be serving without posting a bond with the court. You have the right to petition the court to set a bond for your protection. **You also have the right to petition the court to remove a corporate personal representative not later than thirty (30) days after this notice if the ownership or control of the corporate personal representative has changed since the execution of the decedent's will.**

(3) The personal representative will not obtain court approval of any action, including the amount of attorney's or personal representative's fees.

(4) Within two (2) months after the appointment of the personal representative, the personal representative must prepare an inventory of the estate's assets. You have the right to request and receive a copy of this inventory from the personal representative. However, if you do not participate in the residue of the estate and receive only a specific bequest in money or personal property that will be paid, you are entitled only to the information concerning your specific bequest and not to the assets of the estate as a whole.

(5) The personal representative is required to furnish you with a copy of the closing statement that will be filed with the court, and, if your interests are affected, with a full account in writing of the administration of the estate.

(6) You must file an objection to the closing statement within three (3) months after the closing statement is filed with the court if you want the court to consider your objection.

(7) If an objection to the closing statement is not filed with the court within three (3) months after the filing of the closing statement, the estate is closed and the court does not have a duty to audit or make an inquiry.

IF, AT ANY TIME BEFORE THE ESTATE IS CLOSED, YOU HAVE REASON TO BELIEVE THAT THE ADMINISTRATION OF

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THE ESTATE SHOULD BE SUPERVISED BY THE COURT, YOU HAVE THE RIGHT TO PETITION THE COURT FOR SUPERVISED ADMINISTRATION.

IF YOU DO NOT UNDERSTAND THIS NOTICE, YOU SHOULD ASK YOUR ATTORNEY TO EXPLAIN IT TO YOU.

The personal representative's address is _____, and telephone number is _____. The attorney for the personal representative is _____, whose address is _____ and telephone number is _____.

Dated at _____, Indiana, this _____ day of _____, 20__.

CLERK OF THE _____ COURT

SECTION 5. IC 29-1-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. **(a) This section does not apply to the removal of a corporate fiduciary after a change in control of the corporate fiduciary.**

(b) When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the court may remove the representative ~~as provided:~~ **in accordance with either of the following:**

~~(a)~~ **(1)** The court on its own motion may, or on petition of any person interested in the estate shall, order the representative to appear and show cause why the representative should not be removed. ~~Such~~ **The** order shall set forth in substance the alleged grounds upon which such removal is based, the time and place of the hearing, and may be served upon the personal representative in the same manner as a notice is served under this article.

~~(b)~~ **(2)** The court may without motion, petition or application, for any such cause, in cases of emergency, remove such personal representative instantly without notice or citation.

(c) The removal of a personal representative after letters are duly issued does not invalidate official acts performed prior to removal.

SECTION 6. IC 29-1-10-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. **(a) This section does not apply to the removal of a personal representative under section 6 of this chapter.**

(b) An heir may petition the court for the removal of a corporate fiduciary appointed by the court as personal

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representative if there has been a change in the control of the corporate fiduciary and either of the following applies:

(1) The change in the control of the corporate fiduciary occurred after the date of the execution of the decedent's will but before the decedent's death.

(2) The change in the control of the corporate fiduciary occurred after the corporate fiduciary was appointed and during the administration of the decedent's estate.

(c) A petition described in subsection (b) must be filed:

(1) not later than thirty (30) days after an heir, a devisee, or a legatee receives notice under IC 29-1-7-7(c) or IC 29-1-7.5-1.5, in the case of a change of control described in subsection (b)(1); or

(2) not later than a reasonable time after the change of control, in the case of a change of control described in subsection (b)(2).

(d) The court may remove the corporate fiduciary if the court determines, after a hearing, that the removal is in the best interests of all the beneficiaries of the will. The court may replace the corporate fiduciary with another corporate fiduciary or an individual.

(e) For purposes of this section, a change in control of a corporate fiduciary occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of a total of at least twenty-five percent (25%) of the outstanding voting stock of:

(1) a corporate fiduciary; or

(2) a corporation controlling a corporate fiduciary.

(f) The removal of a corporate fiduciary after letters are duly issued does not invalidate official acts performed before the removal.

(g) If a corporate fiduciary is replaced under this section, the corporate fiduciary is entitled to receive reasonable compensation for services rendered before the removal.

SECTION 7. IC 29-3-6-1, AS AMENDED BY P.L.95-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by ~~certified~~ **first class postage prepaid** mail as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.

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(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4(a).

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards

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1 compensation, pension, insurance, or other allowance for the
2 benefit of an alleged incapacitated person.

3 (B) Any department, bureau, agency, or political subdivision
4 of this state that may be charged with the supervision, control,
5 or custody of an alleged incapacitated person.

6 SECTION 8. IC 29-3-8-6.5 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. (a) If:

8 (1) a guardian takes possession of property that is:

9 (A) jointly owned by or titled in the names of the protected
10 person and another person with rights of survivorship; **or**

11 (B) **owned as a multiple party account with another person**
12 **as joint owner or beneficiary;**

13 (2) the guardian:

14 (A) severs the joint ownership of the property; **or**

15 (B) **uses the assets of the multiple party account;** and

16 (3) the protected person subsequently dies while the other person
17 is living;

18 the other person may elect to receive from the protected person's estate
19 property in an amount determined under subsection (b).

20 (b) The amount of property the other person described in subsection
21 (a) may elect to receive is determined in STEP THREE of the following
22 formula:

23 STEP ONE: Subtract:

24 (A) the value of the severed **or used** property retained by the
25 other person at the time ownership was severed **or used**, if
26 any; from

27 (B) the value of the joint property **or multiple party account**
28 at the time ownership was severed **or the assets were used.**

29 STEP TWO: Divide:

30 (A) the remainder determined under STEP ONE; by

31 (B) the value of the protected person's property, including the
32 jointly held property **or multiple party account**, at the time
33 ownership was severed **or the assets were used.**

34 STEP THREE: Multiply:

35 (A) the quotient determined under STEP TWO; by

36 (B) the value of the deceased protected person's net estate.

37 (c) **As used in this section, "multiple party account" refers to**
38 **both multiple party accounts described by IC 32-17-11 and**
39 **transfer on death securities described by IC 32-17-9.**

40 SECTION 9. IC 30-5-2-2 IS AMENDED TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2009]: Sec. 2. "Attorney in fact" means the
42 person designated to act for the principal under a power of attorney.

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The term includes any of the following:

- (1) The original attorney in fact.**
- (2) A co-attorney in fact.**
- (3) A successor attorney in fact.**
- (4) A person to whom an attorney in fact has delegated authority.**

SECTION 10. IC 30-5-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. "Person" means:

- (1) an individual at least eighteen (18) years of age;**
- (2) a corporation;**
- (3) a trust;**
- (4) a limited liability company; or**
- (5) a partnership;**
- (6) a business trust;**
- (7) an estate;**
- (8) an association;**
- (9) a joint venture;**
- (10) a government or political subdivision;**
- (11) an agency;**
- (12) an instrumentality; or**
- (13) any other legal or commercial entity.**

SECTION 11. IC 30-5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. "Power of attorney" means a writing or other record that grants authority to an attorney in fact or agent to act in place of a principal, whether the term "power of attorney" is used. The term refers to all types of powers of attorney, including durable powers of attorney, **except for the following:**

- (1) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a credit in connection with a credit transaction.**
- (2) A proxy or other delegation to exercise voting rights or management rights with respect to an entity.**
- (3) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.**

SECTION 12. IC 30-5-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. A power of attorney is valid if the power of attorney was valid at the time the power of attorney was executed under any of the following:

- (1) This article.**
- (2) IC 30-2-11 (repealed).**

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1 (3) Common law.

2 (4) The law of another state or foreign country.

3 **(5) The requirements for a military power of attorney under**
 4 **10 U.S.C. 1044b.**

5 SECTION 13. IC 30-5-3-6 IS ADDED TO THE INDIANA CODE
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 7 1, 2009]: **Sec. 6. The meaning and effect of a power of attorney are**
 8 **determined by the law of the jurisdiction indicated in the power of**
 9 **attorney. In the absence of an indication of jurisdiction, the**
 10 **meaning and effect of a power of attorney are determined by the**
 11 **law of the jurisdiction in which the power of attorney was**
 12 **executed.**

13 SECTION 14. IC 30-5-3-7 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2009]: **Sec. 7. This article modifies, limits, and supersedes the**
 16 **Electronic Signatures in Global and National Commerce Act (15**
 17 **U.S.C. 7001 et seq.). However, this article does not:**

18 (1) modify, limit, or supersede 15 U.S.C. 7001(c); or

19 (2) authorize the electronic delivery of a notice described in 15
 20 U.S.C. 7003(b).

21 SECTION 15. IC 30-5-4-2, AS AMENDED BY P.L.101-2008,
 22 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2009]: **Sec. 2. (a) Except as provided in subsection (b), a**
 24 **power of attorney is effective on the date the power of attorney is**
 25 **signed in accordance with section 1(4) of this chapter.**

26 (b) A power of attorney may:

27 (1) specify the date on which the power will become effective; or

28 (2) become effective upon the occurrence of an event.

29 **(c) If a power of attorney becomes effective upon the principal's**
 30 **incapacity and:**

31 (1) the principal has not authorized a person to determine
 32 whether the principal is incapacitated; or

33 (2) the person authorized is unable or unwilling to make the
 34 determination;

35 the power of attorney becomes effective upon a determination that
 36 the principal is incapacitated that is set forth in a writing or other
 37 record by a physician, licensed psychologist, or judge.

38 (d) A person authorized by the principal in the power of
 39 attorney to determine that the principal is incapacitated may:

40 (1) act as the principal's personal representative under the
 41 Health Insurance Portability and Accountability Act of 1996
 42 (42 U.S.C. 201 et seq.) and any rules or regulations issued

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1 **under that act; and**

2 **(2) obtain access to the principal's health care information**
 3 **and communicate with the principal's health care provider.**

4 SECTION 16. IC 30-5-4-4 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Except as stated
 6 otherwise in the power of attorney, an attorney in fact fails to serve or
 7 ceases to serve when:

8 (1) the attorney in fact dies;

9 (2) the attorney in fact resigns;

10 (3) the attorney in fact is adjudged incapacitated by a court;

11 (4) the attorney in fact cannot be located upon reasonable inquiry;

12 (5) the attorney in fact, if at one time the principal's spouse,
 13 legally is no longer the principal's spouse; or

14 (6) a physician familiar with the condition of the current attorney
 15 in fact certifies in writing to the immediate successor attorney in
 16 fact that the current attorney in fact is unable to transact a
 17 significant part of the business required under the power of
 18 attorney.

19 (b) Except as stated otherwise in the power of attorney, if the
 20 replaced attorney in fact reappears or is subsequently able to transact
 21 business, the successor attorney in fact shall remain as the attorney in
 22 fact.

23 (c) Except as otherwise stated in the power of attorney, an attorney
 24 in fact designated as a successor has the powers granted under the
 25 power of attorney to the original attorney in fact.

26 **(d) Unless a power of attorney provides a different method for**
 27 **an attorney in fact's resignation, an attorney in fact may resign by**
 28 **giving notice to the principal, and, if the principal is incapacitated:**

29 (1) to:

30 (A) the principal's guardian, if a guardian has been
 31 appointed for the principal; and

32 (B) a co-attorney in fact or successor attorney in fact; or

33 (2) if there is no person described in subdivision (1), to:

34 (A) the principal's care giver;

35 (B) another person reasonably believed by the attorney in
 36 fact to have sufficient interest in the principal's welfare; or

37 (C) a governmental agency having authority to protect the
 38 welfare of the principal.

39 SECTION 17. IC 30-5-5-7.5 IS ADDED TO THE INDIANA CODE
 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2009]: Sec. 7.5. (a) **Language conferring general authority with**
 42 **respect to transfer on death or payable on death transfers means**

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the principal authorizes the attorney in fact to do the following:

(1) Establish one (1) or more transfer on death transfers or payable on death transfers.

(2) Designate, amend, remove, modify, or change any designation of beneficiary in a transfer on death transfer or payable on death transfer, including those created by the principal before or after the execution of the power of attorney.

(3) Terminate any transfer on death transfer or payable on death transfer.

(4) Add to or withdraw from any transfer on death transfer or payable on death transfer.

(5) Exercise any right or authority that the principal may have in a transfer on death transfer or payable on death transfer during the principal's lifetime.

(b) The powers described in this section are equally exercisable with respect to transfer on death transfers and payable on death transfers that are established or operated in Indiana or another jurisdiction.

(c) A power of attorney that is executed before July 1, 2009, and that confers general authority with respect to all other matters under section 19 of this chapter also confers general authority with respect to transfer on death transfers and payable on death transfers as described in this section.

SECTION 18. IC 30-5-9-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11.** An attorney in fact that violates this article is liable to the principal or the principal's successors in interest for damages and an amount required to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid as a result of the violation.

SECTION 19. IC 30-5-10-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.5.** Unless the power of attorney provides otherwise, an attorney in fact may exercise authority until the authority terminates under this chapter, even if time has passed since the execution of the power of attorney.

SECTION 20. IC 32-21-2-3, AS AMENDED BY P.L.194-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.** (a) For a conveyance, a mortgage, or an instrument of writing to be recorded, it must be:

(1) acknowledged by the grantor; or

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(2) proved before a:

- (A) judge;
- (B) clerk of a court of record;
- (C) county auditor;
- (D) county recorder;
- (E) notary public;
- (F) mayor of a city in Indiana or any other state;
- (G) commissioner appointed in a state other than Indiana by the governor of Indiana;
- (H) minister, charge d'affaires, or consul of the United States in any foreign country;
- (I) clerk of the city county council for a consolidated city, city clerk for a second class city, or clerk-treasurer for a third class city;
- (J) clerk-treasurer for a town; or
- (K) person authorized under IC 2-3-4-1.

(b) In addition to the requirements under subsection (a), a conveyance may not be recorded after June 30, 2007, unless it meets the requirements of this subsection. **ff The conveyance must include the mailing address on the conveyance to which statements should be mailed under IC 6-1.1-22-8.1. If the mailing address for statements under IC 6-1.1-22-8.1 is not a street address or a rural route address of the grantee, the conveyance must also include a street address or rural route address of the grantee after the mailing address for statements mailed under IC 6-1.1-22-8.1. A conveyance complies with this subsection if it contains the address or addresses required by this subsection at the end of the conveyance and immediately preceding or following the statements required by IC 36-2-11-15.**

SECTION 21. IC 34-9-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) This section applies when a person:

- (1) receives personal injuries caused by the wrongful act or omission of another; and
- (2) subsequently dies from causes other than those personal injuries.

(b) The personal representative of the decedent who was injured may maintain an action against the wrongdoer to recover all damages resulting before the date of death from those injuries that the decedent would have been entitled to recover had the decedent lived. The damages:

- (1) inure to the exclusive benefit of the decedent's estate; **and**
- (2) **are subject to IC 6-4.1.**

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